

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

PRESTON WOOD & ASSOCIATES, LLC, )  
 )  
Plaintiff, ) NO. H-16-CV-1427  
 )  
v. ) August 22, 2018  
 )  
CAMERON ARCHITECTS, INC., )  
STEPHEN CAMERON, and UL, INC., )  
d/b/a URBAN LIVING, and )  
VINOD RAMANI, )  
 )  
Defendants.

TRIAL  
BEFORE THE HONORABLE DAVID HITTNER  
AND A JURY

VOLUME 1  
PAGES 1-1 to 1-83

For the Plaintiff: Patrick A. Zummo  
Attorney at Law  
909 Fannin, Suite 3500  
Houston, TX 77010

Louis K. Bonham  
Califf T. Cooper  
Osha Liang, LLP  
909 Fannin, Suite 3500  
Houston, TX 77010

For the Defendants: Justin Strother  
Michael W. Belleville  
Strother Law Firm, PLLC  
3000 Wesleyan, Suite 348  
Houston, TX 77027

Court Reporter: Bruce Slavin, RPR, CMR

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*Jury Selection*

1 (Venire panel present)

2 THE COURT: Thank you, ladies and gentlemen.

3 Please be seated.

4 I'm Dave Hittner, one of the Judges of the  
10:26 5 United States District Court of the Southern District of  
6 Texas. I want to welcome you on the next step and maybe the  
7 first step on your jury service.

8 As you know, you come from a number of  
9 different counties that come down by phone. So, I always  
10:26 10 ask this first.

11 Those of you that this is the first time on  
12 this jury service, you've come up to a courtroom, if you'd  
13 please raise your hand.

14 (Show of hands)

10:26 15 Okay. So, we have a couple of hands that went  
16 up. You've been up in other courtrooms? How many have been  
17 up to other courtrooms?

18 (Show of hands)

19 Oh. All right.

10:26 20 Well, this is a little bit different.  
21 Everything is different. Nothing's 100 percent. So, I say  
22 99 percent of the folks that have sat on juries while I've  
23 been a judge have found it to be a very positive experience  
24 and, hopefully, you will, too.

10:27 25 As far as how long I've been doing this, I was

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1 in state court as an elected state judge for about seven and  
2 a half years. I've been over here 32 years.

3 And everyone says, 'Well, you've been here  
4 this long. How come you have such a small courtroom?'

10:27 5 Because some of the others are monsters in this courthouse.

6 This, traditionally, was the courtroom that  
7 all junior judges started from and, as soon as they could,  
8 they'd beat it off the eighth floor. The only difference is  
9 I stayed and started accumulating all the offices.

10:27 10 So, I've got more office space than any other  
11 judge in the building; so, I'm not trading that.

12 And that pole. Everybody says, 'Well, you've  
13 got that pole.'

14 Well, I first got down here and I heard from  
10:27 15 somebody, 'A federal judge can do anything, you know, if he  
16 or she wants to.'

17 'I want to get rid of that pole.'

18 So, they're looking at me. So, they did a  
19 quick survey. They found out that that pole is a  
10:28 20 weight-bearing pole for the whole building. And they said  
21 they could theoretically get around it.

22 You get rid of that pole by getting steel  
23 girders like they have on bridges and so forth and kind of  
24 bridge across it even though it has to go up and down the  
10:28 25 whole building. And they said they couldn't guarantee

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1 everything wouldn't crash in on the eighth floor. So, I  
2 need the pole.

3 And I had some high-profile case a number of  
4 years ago. They upgraded everything here, including putting  
10:28 5 in those TV cameras, and we have folks that -- we have a  
6 hearing amplification for folks who may have a hearing  
7 problem. We've got those two boxes of infrared transmitters  
8 for this whole building and so -- for this whole courtroom.

9 So, it tends to work. So, I've never moved  
10:28 10 and I'm not going to -- kicking and screaming, perhaps, one  
11 of these days moving out.

12 Everybody serves on jury duty. So, I'm glad  
13 you're here.

14 If you look to the corner of the jury box,  
10:29 15 those are my juror badges hanging up there on the corner of  
16 the jury box.

17 When I was a state court trial judge, I served  
18 on a state court jury right in that same building, actually,  
19 on the same floor my own courtroom was. And since I've been  
10:29 20 to federal court, I've been called down to jury duty once to  
21 the City of Houston Traffic Court and the other one is the  
22 Justice of the Peace Court.

23 So, we all serve. All I can tell you is that  
24 we're going to move this case along as quickly as we  
10:29 25 possibly can consistent with the interests of the parties.

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1 Sometimes people don't have a real handle on what jury duty  
2 is about.

3 I had one case that lasted quite a while. One  
4 of the jurors was a teacher, and I got a card from her  
10:29 5 class. Apparently, maybe they were getting rid of -- they  
6 were tired of the substitute. So, all the kids got together  
7 and they wrote me a letter.

8 By the way, I'll read it to you in a moment  
9 because the text is really cute. But it was so impressive I  
10:30 10 actually had it enlarged, and that's that big, square --  
11 what is it? -- rectangular -- what is it? -- frame right  
12 next to the jury room door. So, if you get selected, this  
13 is what it says on there.

14 Each of the youngsters drew a stick figure of  
10:30 15 themselves with their name under it, and this was the  
16 letter. It says: "Dear Mr. Judge, Please let my teacher  
17 come back to school soon. We really do miss her."

18 So, that was nice to see. The teacher had  
19 about another week to go, got off jury duty and went back to  
10:30 20 her class. It was a second grade class in Katy Independent  
21 School District, and it goes back a ways to March 2006.

22 Let's talk about this type of court. Okay?  
23 This is -- The district court on the federal level is the  
24 highest level of the trial court in the federal system. So,  
10:31 25 this is the last stop we actually have jurors in the box.

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1 In effect, ancillary to this court are the  
2 United States magistrate judges and their courts, the U.S.  
3 bankruptcy courts. And almost every federal agency has  
4 their own appellate process within the system, like the  
10:31 5 Energy Department and the Veterans Administration.

6 If you think that you've been denied benefits  
7 or you're granted benefits with their appellate system, you  
8 can bring it to the one-judge court. I sit as an appeals  
9 court occasionally from the bankruptcy court and from the  
10:31 10 magistrate's court.

11 We also handle appeals from the Social  
12 Security Administration. If people are denied benefits or  
13 if they're granted benefits and the -- what is it? -- and  
14 the administrative hearing examiners disagree, granted  
10:32 15 benefits a certain way and the government disagrees, the  
16 agencies, they can appeal in here.

17 But, in any event, this is the last stop for  
18 the trial level. Okay? Cases move on up the ladder, so to  
19 speak, from here if the lawyers feel it's necessary.

10:32 20 So, the next step up is the United States  
21 Court of Appeals. There are 12 Courts of Appeal, basically,  
22 in the United States, regular cases.

23 Each of the states are divided into -- Each  
24 areas of the country are divided into different circuits.  
10:32 25 We are in the Fifth Circuit. So, all appeals from this

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1 court go to the United States Court of Appeals for the Fifth  
2 Circuit, taking in the states of Texas, Louisiana and  
3 Mississippi.

4 So, all trials, what happens is, if they want  
10:33 5 an appeal, they'll ask the court reporter to type up the  
6 transcript, the attorneys will write briefs and then they  
7 can go and argue the case in front of the United States  
8 Court of Appeals for the Fifth Circuit.

9 The headquarters of the court is in  
10:33 10 New Orleans. Historically, it's in New Orleans. But the  
11 judges come from all three states.

12 So, an appeal, let's say, from this courtroom  
13 will go to the U.S. Court of Appeals for the Fifth Circuit,  
14 but the judges for all three states -- In this building, I  
10:33 15 think we have about six circuit judges residing here, the  
16 ones from Texas and, of course, Louisiana and Mississippi.  
17 They're all spread out through those states.

18 Very often you go. The judges, if they grant  
19 oral argument, will hear 20 minutes a side from the attorney  
10:33 20 standing at a podium. The judges sit three judges. No  
21 evidence is presented, no jury. They just argue what's  
22 right or wrong with the transcript of the case or the  
23 rulings the judge made or whatever.

24 And then the judges go back. They fly in from  
10:34 25 the different states. For instance, an appeal from this



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1 court could be heard at random, because they select the  
2 judges at random by a computer, by two judges who reside in  
3 Louisiana and one from Mississippi, but they make up the  
4 Court of Appeals panel.

10:34 5 Now, after they come down with their ruling  
6 either affirming or reversing or partially affirming or  
7 firmly reversing, it comes on back. A person has a right to  
8 request, civil and criminal, an appeal to the United States  
9 Supreme Court.

10:34 10 Of course, the Supreme Court sits in  
11 Washington made up of nine justices, and they hear appeals  
12 from all of the circuit courts and, also, from all the  
13 Supreme Courts of all the states. But they don't have to  
14 take every case that comes in.

10:35 15 It's a lot different than our Courts of  
16 Appeals. They pick and choose. And each year at the end of  
17 the session I have my staff call up to the Supreme Court and  
18 find out how many cases they recently had.

19 The recent -- The most recent statistics are  
10:35 20 as follows from the whole country: 6,475 cases were  
21 appealed to the U.S. Supreme Court, meaning -- well,  
22 actually, requested to be heard -- and the Court actually  
23 wrote opinions on just 62 cases.

24 So, in effect, you get one crack at the Court  
10:35 25 of Appeals and just a rare case is accepted by the Supreme

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1 Court to rule. So, it's going to be a case of major  
2 constitutional importance. Or there's another reason  
3 they'll take a case: if there's what they call a conflict  
4 of the circuits.

10:36 5 The Ninth Circuit is the largest statewide  
6 regional one. That's in California. Let's look at that.  
7 California, Washington, Oregon, the whole West Coast, over  
8 to Nevada and -- what is it? -- Arizona and then you've --  
9 Those are the western states.

10:36 10 Let's say they decide a case a certain way and  
11 just, by chance, let's say, a year later the Second Circuit,  
12 which is New York, Vermont and -- what is it? -- Connecticut  
13 over there decide a case almost exactly the same, but they  
14 decide it differently. So, that's a conflict of the  
10:36 15 circuits. That's another reason why the U.S. Supreme Court  
16 might take a case.

17 But that's how the system works. This is the  
18 last stop of trials with juries, and we're glad to have you  
19 here.

10:36 20 I want to tell you about the workday  
21 generally. I know you were a little early today.  
22 Generally, we begin at 10:00 a.m. and we adjourn at  
23 6:00 p.m.

24 This allows the jurors who sit on the case to  
10:37 25 get here after the rush hour and to leave after the rush

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1 hour and allows me to come in from 9:00 to 10:00 and during  
2 the lunch hour to hear other matters, criminal matters,  
3 civil matters, like sentencings, rearraignments, summary  
4 judgment hearings, defaults and things like that. So,  
10:37 5 that's basically the schedule.

6 We've all seen a lot of TV trials. I don't  
7 watch much because it's like working, and it's not very  
8 accurate. But -- what is it? *JAG*? Is that still on? *Law*  
9 *& Order* and *Judging Amy*. There's also -- What is it? What  
10:37 10 is it? *The Good Wife* was on, but now what is it? It's on  
11 the CBS pay station.

12 But, anyhow, we got lots going on on TV.  
13 *Judge Judy*, of course. That Judge Judy -- By the way,  
14 kidding aside, last year in the *TV Guide*, she's the highest  
10:38 15 paid performer on television, all of TV. I kid you not.  
16 40 million a year. I don't know. Maybe I'll put my name in  
17 for the next one around. We all grew up, a lot of us, on  
18 Judge Wopner. Remember? *The People's Court*.

19 In any event, kids always bring you down aside  
10:38 20 from pictures like that. I remember I was -- You know, show  
21 and tell, bring your parents to school as to what he or she  
22 does.

23 And years ago I was out talking to one of my  
24 kids' courts -- kids' classrooms and some little girl raised  
10:38 25 her hand and wanted to know was I as important as

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1 Judge Judy. I said, "No. I'm not. Not really."

2 But, in any event, you've seen a lot on TV. A  
3 federal trial has never been videoed. It's never been  
4 videoed. It's all state court. It's not to criticize.

10:39 5 It's just that we're different.

6 We're going to talk about two things. You  
7 don't know yet whether this is a civil or a criminal case.  
8 Okay? I'll tell you in a moment. But let's talk about the  
9 burden of proof, the burden of proof in a civil case.

10:39 10 Let's say it's a contract matter, maybe a  
11 personal injury. You occasionally get them over here,  
12 contract banking or whatever. All right?

13 The plaintiff, that name, that's the person  
14 who brings the lawsuit. The defendant is against whom it's  
10:39 15 brought. This is a civil case.

16 The jury, if you sit -- If it's a civil case,  
17 you're -- the plaintiff must prove his or her case by a  
18 preponderance of the credible evidence.

19 So, what does that mean? By the way, you'll  
10:39 20 get written instructions on this at the end. Preponderance  
21 of the credible evidence. Lawyers often use this. You  
22 picture the scales of justice. A very slight tipping is a  
23 preponderance of the evidence. Very slight tipping.

24 Now, if this is a criminal case, the  
10:40 25 government must prove its case against the defendant beyond

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1 a reasonable doubt. That's not beyond all doubt, not beyond  
2 a shadow of a doubt. But it's beyond a reasonable doubt.

3 Again, you'll get an instruction that this is  
4 a criminal case. But, again, picture those scales of  
10:40 5 justice. Beyond a reasonable doubt is a much heavier  
6 tipping of the scale.

7 As the lawyers come and visit with you or if I  
8 ask you a question -- Let's say it's a medical case and you  
9 have some background in the medical community. We don't  
10:40 10 want anybody in there getting to be an expert on their own.

11 So, the bottom line would be -- or let's say  
12 it was a criminal case. Maybe you or a close relative is a  
13 police officer. You know, they're going to ask you some  
14 questions.

10:40 15 The bottom line is this: If that -- Whatever  
16 it is that you may have a concern about or a background  
17 about, the question is: Would that prohibit you from being  
18 fair and impartial on this case -- and here's the key  
19 phrase -- without having heard any of the evidence?

10:41 20 I can't impress upon you the importance of  
21 that, being fair and impartial without having heard any of  
22 the evidence.

23 I analogize it each time to this: Like an  
24 Olympic 100-meter dash. All of the runners are in the  
10:41 25 starting blocks together, starting equal. Then that

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1 starting gun goes off and then, in effect, the contest  
2 begins.

3 I don't want to relate this to a footrace or  
4 even to a horse race where all the animals are in the stall  
10:41 5 and then the bell goes and out come the horses. But what it  
6 is we're looking for is can you give both sides an equal  
7 shake without having heard any of the evidence, everybody  
8 equal at the start.

9 Then, of course, you start listening to both  
10:42 10 sides. And, eventually, you will get the instructions from  
11 the judge, either in a civil case, fill in the blanks and  
12 how much money, if any, or in a criminal case, guilt or  
13 innocence.

14 So, right at this point, that's the basic  
10:42 15 question. You don't know anything about the case. But I'll  
16 try this.

17 Anything about what I've said so far that  
18 would prohibit you from being fair and impartial in this  
19 case without having heard any of the evidence yet?

10:42 20 All right. We got no hands. Good.

21 Now, let me tell you about this case. This  
22 case is a civil case. Nobody's going to jail or anything  
23 else. Okay? It's a civil case. Really interesting.

24 I'm going to read you a statement of the facts  
10:42 25 in just a moment because the attorneys and I worked a good

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1 part of yesterday getting all the evidence down so we can  
2 move it along today.

3 By the way -- And I always mention this and,  
4 of course, there's been some other criminal matters in  
10:43 5 the -- what is it? -- in the public eye recently, a lot of  
6 it in federal court.

7 In federal court -- okay? -- only the judge  
8 does the sentencing. So, if you were a juror in a federal  
9 criminal case, you would decide guilt or innocence, but you  
10:43 10 would not decide the penalty. The penalty is up to the  
11 judge in the federal court.

12 Of course, you know, in the state court  
13 system, almost all of it, the jury says guilt or innocence  
14 and, if it's guilty, then they come back for the sentencing  
10:43 15 phase. There's only one case where you come back in, and  
16 that's a death penalty case.

17 When you have a death penalty case in federal  
18 court, then, just like all the state system, you'll come  
19 back in and decide what the punishment should be. Aside  
10:43 20 from that, the jury does not.

21 Also, just as a little bit of background,  
22 there is no parole in the federal system, and that's not to  
23 be criticizing of any state system, which is different.

24 In state court, let's say you get a certain  
10:44 25 sentence. You're eligible for parole after maybe a quarter

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1 of your time or a half of your time. That is not the case  
2 in any federal sentence.

3 In federal court, you will serve the entire  
4 time. The only possibility is, if you behave yourself, the  
10:44 5 most you can get is 54 days a year good time after the first  
6 year.

7 So, if you see a case coming down where a  
8 person is sentenced to a year, a year and a day, that one  
9 day means that they may be eligible for good time because  
10:44 10 good time accrues if your sentence is more than one year.  
11 So, just keep that in mind.

12 Again, no parole at all. So, any federal  
13 sentence, you will serve at least -- I think it's 89 to  
14 90 percent of your sentence. The Parole Commission was  
10:45 15 abolished in 1986 in federal court. So, we have no parole.

16 I'm going to read you now just a brief  
17 description of the case, and then I'm going to turn it over  
18 to the attorneys, who are going to visit with you about the  
19 case.

10:45 20 Oh. Oh. One other thing.

21 The attorneys are going to be on a timing  
22 order. They'll get a worksheet like this every day because  
23 the promise I make to the jury is that this case will move  
24 along.

10:45 25 Those of you that have sat on state court



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1 juries know that the judge doesn't have that much of a role  
2 in the case.

3 In federal court, the judge can jump in and  
4 mix it up a lot more than they can in the state system. But  
10:45 5 I also have the great equalizer. That's what I tell the  
6 jury. I've got a chess clock. Okay?

7 Now, they're going to have a certain amount of  
8 time. There's the clock. That's on. They're going to have  
9 a certain amount of time to question their witnesses and to  
10:45 10 cross-examine the other witnesses, and I will be setting  
11 that time today. All right?

12 When the time is up, they sit down. No more  
13 questions. So, if you see me touching the buttons, there --  
14 that guy is up, this guy makes an objection, right down; it  
10:46 15 goes the other way. So, the time runs. When the time is  
16 up -- That's the deal I make with you.

17 This is going to be, the attorneys have  
18 stated, an extremely short case for federal court. We're  
19 talking about testimony, whenever it begins, of well less  
10:46 20 than a week. It's going to go quickly. And, again, they  
21 will move along and -- consistent with the rights.

22 Now, keep in mind both sides have waited to  
23 get to today. This is their day in court. That's what our  
24 whole system is geared for.

10:46 25 If they couldn't work out any kind of a

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1 settlement -- which is fine -- they come to court and they  
2 submit it to a cross-section of the community. That's what  
3 you are, a cross-section of the community, to render a  
4 verdict on this disputed fact pattern.

10:47 5 Okay. Let's tell you what the case is about,  
6 and then we're turning it over to the attorneys.

7 This is a copyright case. The Plaintiff --  
8 Remember, the Plaintiff, who happens to be sitting at this  
9 table -- they may be shifting to the other table during the  
10:47 10 trial so they can be closer to the jury -- but the Plaintiff  
11 is a design firm known as Preston Wood & Associates, LLC,  
12 legal -- what is it? -- legal -- limited legal corporation?

13 MR. ZUMMO: Limited liability company.

14 THE COURT: Okay. There it is. That's what it  
10:47 15 stands for. It's a company.

16 The Plaintiff is a design firm, Preston Wood &  
17 Associates. The Defendants are a real estate firm known as  
18 "UL", the two initials, "Inc.", Incorporated, doing business  
19 as Urban Living; its owner, Vinod Ramani -- it's  
10:48 20 R-a-m-a-n-i; and an architecture firm, Cameron Architects,  
21 Inc., and its owner, Stephen Cameron.

22 So, on the Plaintiff's side, we have Preston  
23 Wood & Associates. On the defense side, UL, Inc., doing  
24 business as Urban Living, its owner, a Mr. Ramani; an  
10:48 25 architectural firm, Cameron Architects, Inc., and its owner,

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1 Mr. Cameron.

2 Now, the Plaintiff -- This is what they're  
3 alleging. You haven't heard any evidence. The Plaintiff  
4 alleges that the Defendants have infringed the copyrights of  
10:48 5 Preston Wood's architectural plans, drawings and building  
6 designs.

7 Preston Wood also alleges that the Defendants  
8 have violated federal copyright law by distributing copies  
9 of Preston Wood's works that had Preston Wood copyright  
10:49 10 management information removed or altered from the plans.

11 Preston Wood seeks to recover the profits that  
12 the Defendants made from their allegedly infringing  
13 activities as well as other damages allowed by law. That's  
14 what the Plaintiff says.

10:49 15 Now, what does the defense on the other side  
16 say?

17 The Defendants say that Preston Wood's works  
18 include many unprotectable elements, and they deny that the  
19 works at issue in this case infringe on the protectable  
10:49 20 parts of Preston Wood's works.

21 Further, they disagree as to what portion, if  
22 any, of the Defendants' profits are attributable to the  
23 protectable parts of Preston Wood's works.

24 It may sound complicated, but we've talked  
10:49 25 about it. The skill of the lawyers -- and they're all

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1 experienced federal jury practitioners -- is going to get  
2 it -- it's ready and you're going to understand it. We're  
3 going to have some experts come.

4 And that's why I've never tired of doing what  
10:50 5 I do. I learn all sorts of things about all sorts of  
6 businesses. I know how to dredge a canal. I know how to  
7 sandblast a bridge. I know how to load rice bags into the  
8 hold down in Galveston -- what is it? -- the design of  
9 swimming pools, all sorts of things. And we have people  
10:50 10 sometimes, you know, with advanced degrees going to be  
11 called, perhaps, as experts in these areas.

12 Anyhow, that's what the case is about.

13 Once again, without hearing anything else,  
14 anybody feel, based upon those facts, you can be fair --  
10:50 15 that you couldn't be fair and impartial without having heard  
16 any of the evidence yet?

17 Yes, ma'am. That's Juror No --

18 PROSPECTIVE JUROR: 7.

19 THE COURT: No. 7. We'll call you up later. Okay?

10:51 20 All right. Each side has been granted a  
21 maximum of 30 minutes. The clock goes on -- By the way, the  
22 actual time that they're going to be required to adhere to  
23 for the whole trial doesn't start during the voir dire.

24 "Voir dire" is a French term meaning "to see"  
10:51 25 or "to speak" or whatever. Basically, it is what -- the

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1 attorneys have time to visit with you and maybe have a  
2 question about what you have filled out here. They know  
3 they're not going to ask any question on here.

4 I've tried cases everywhere from, I guess,  
10:51 5 Arizona over to New York on the federal side, and this is  
6 the most comprehensive juror information form I've ever  
7 seen.

8 About 30 years ago I was a member of the  
9 small committee here that actually worked this up. So, this  
10:51 10 is what makes the voir dire go quickly, and it will.

11 But, anyhow, they got 30 minutes. So, at this  
12 time -- The Plaintiff, remember, has got the burden of  
13 proof. And they have the burden of proof; so, they'll go  
14 first.

10:52 15 All right. Counsel for the Plaintiff, go  
16 right ahead.

17 MR. ZUMMO: Thank you, Your Honor.

18 My name is Pat Zummo. I'm a lawyer here in  
19 Houston, and I have the pleasure and the honor in this  
10:52 20 courtroom in this trial to represent --

21 THE COURT: Mr. Zummo --

22 MR. ZUMMO: Yes, sir.

23 THE COURT: -- as I mentioned, if you want to walk  
24 up and down, you may, but you need the microphone. Do you  
10:52 25 want the microphone? No. Do you want the portable mic?

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1 MR. ZUMMO: I do not need it.

2 THE COURT: Okay. Then, pull the mic in, please,  
3 sir.

4 MR. ZUMMO: I have the honor of representing  
10:52 5 Preston Wood & Associates, which is a home design firm.  
6 And, as a starting point, I'd like to introduce the owners  
7 and the people who are responsible for Preston Wood &  
8 Associates, Preston Wood --

9 THE COURT: Stand up so everybody in the back...

10:52 10 MR. ZUMMO: -- and Samantha Wood. We --

11 THE COURT: Now, you've got to sit down. We can't  
12 see Miss Wood. No. No. You're being blocked by your  
13 husband -- no pun intended.

14 MR. ZUMMO: That's not the way their marriage  
10:53 15 works.

16 You'll hear us refer to Samantha as "Sam"  
17 throughout this trial. Preston and Sam have operated that  
18 business in different forms for around 40 years.

19 I also want to introduce my co-counsel in this  
10:53 20 case.

21 First, Louis Bonham is an attorney who used to  
22 live and work in Houston, but for well over 10 years he's  
23 lived in Austin, and then Califf Cooper, who is an attorney  
24 here in Houston. They're both with a law firm called Osha  
10:53 25 Liang, which is here in Houston, but has other offices.

*Jury Selection*

1 Does anybody know any of the -- Sam, Preston  
2 or any of the lawyers that we've introduced so far?

3 PROSPECTIVE JUROR: I know Preston.

4 MR. ZUMMO: You do, ma'am? Well, then, we -- as  
10:53 5 Judge Hittner said, we'll talk to you --

6 THE COURT: Oh. You do?

7 PROSPECTIVE JUROR: Uh-huh.

8 THE COURT: Why don't you stand up and tell us  
9 about it. Who do you know?

10:54 10 PROSPECTIVE JUROR: I know Preston.

11 THE COURT: Stand up, ma'am, please.

12 Who do you know?

13 PROSPECTIVE JUROR: I know Preston.

14 THE COURT: Okay.

10:54 15 MR. ZUMMO: I believe you're Mrs. [REDACTED]?

16 PROSPECTIVE JUROR: No.

17 MR. ZUMMO: Oh. [REDACTED]. [REDACTED].

18 PROSPECTIVE JUROR: [REDACTED].

19 MR. ZUMMO: And you're an architect?

10:54 20 PROSPECTIVE JUROR: I'm an architect.

21 THE COURT: Okay. Good. Then, we will call you up  
22 later. I just want to make sure. Thanks so much.

23 MR. ZUMMO: Your Honor, can I ask Mr. Strother to  
24 introduce his parties and his clients at his --

10:54 25 THE COURT: Yes. Go right ahead.

*Jury Selection*

1 MR. STROTHER: Use the microphone?

2 THE COURT: No. They'll hear you from right there.

3 MR. STROTHER: Okay. I'm Justin Strother and I  
4 represent the Defendants in the case.

10:54 5 Next to me is Vinod Ramani. He is the owner  
6 and principal of Urban Living, which is the real estate  
7 brokerage.

8 Next to him is Stephen Cameron. He is the  
9 owner and he's the architect of Cameron Architects.

10:54 10 Across the table from me is my associate, Mike  
11 Belleville.

12 And next to him is Angela Cameron. She's  
13 Stephen's wife and she also handles the finances of the  
14 firm, the architectural firm.

10:54 15 Thank you.

16 MR. ZUMMO: Thank you.

17 THE COURT: Wait a second. You didn't introduce  
18 your other associate.

19 MR. STROTHER: I introduced Mr. Belleville and  
10:55 20 Ms. Cameron.

21 THE COURT: Oh. You have. Okay.

22 MR. ZUMMO: So, does anyone know any of the  
23 Defendants or their lawyers? Okay.

24 I'm going to ask you about two other people  
10:55 25 who are going to be witnesses in this case.



*Jury Selection*

1                   There is an architect here in Houston named  
2                   Suzanne Labarthe with the firm of Rogers Labarthe.

3                   Does anyone know Suzanne?

4                   Thank you, ma'am.

10:55 5                   And then there's an architecture professor at  
6                   the University of Houston named Leonard Bachman, and he's  
7                   expected to testify.

8                   Does anybody know Professor Bachman?

9                   Thank you.

10:55 10                  As Judge Hittner said, he's going to give you  
11                  instructions at the conclusion of the case on what the law  
12                  is that applies to this particular copyright infringement  
13                  case.

14                  In our system, we have a split of the jobs in  
10:55 15                  the courtroom. The Judge is in charge of the law, and the  
16                  Judge is also the person who ensures that the rules are  
17                  being followed so that both sides get a fair trial.

18                  What the jury does in our system is answer  
19                  specific questions that we have about the facts of the case,  
10:56 20                  basically: What is it that actually happened? What really  
21                  happened? And we often say that the jury is the sole judge  
22                  of the facts.

23                  And the reason we use juries for this is it  
24                  just -- Over generations, what we've learned is that, when  
10:56 25                  you have arguments over what happened, questions about the

*Jury Selection*

1 evidence, is it believable evidence and reliable evidence or  
2 not, one of the best ways to judge that evidence and decide  
3 if it's believable is to bring together a group of people.

4 In this case, we're going to have eight people  
10:56 5 selected for the jury, and what that means is that we will  
6 have the benefit of eight lifetimes of experience in dealing  
7 with people in understanding what to believe and what not to  
8 believe.

9 And there are a lot of times when a group of  
10:57 10 people may not be the best way to decide something, but what  
11 we've learned in our system is, when it comes to judging  
12 believability and credibility of witnesses and other  
13 evidence, putting a group of eight people, or twelve people  
14 in some other cases, together gives us the best solution to  
10:57 15 who do you believe and what really happened here.

16 So, what -- I'm going to ask some questions  
17 about, you know, can we all follow these jobs, can we all do  
18 the jobs that we're going to have.

19 First of all, is there anybody who thinks you  
10:57 20 will not be able to follow Judge Hittner's instructions on  
21 the law? I wouldn't expect that.

22 THE COURT: I wouldn't expect it either.

23 MR. ZUMMO: Right.

24 I'm going to pick on two people because we  
10:58 25 actually have two lawyers on this panel. And we get those

*Jury Selection*

1 information sheets that you filled out. We get them far  
2 enough in advance to understand your background.

3 But is it Ms. [REDACTED], Juror No. 17? You're a  
4 lawyer?

10:58 5 PROSPECTIVE JUROR: Yes.

6 THE COURT: Ma'am, would you stand up, please.

7 PROSPECTIVE JUROR: Yes.

8 MR. ZUMMO: And then, Mr. [REDACTED], you're a lawyer?

9 PROSPECTIVE JUROR: Yes.

10:58 10 MR. ZUMMO: I'm going to put you two on the spot.

11 THE COURT: No, you're not. No, you're not.

12 Have a seat.

13 MR. ZUMMO: Okay.

14 THE COURT: In other words, if you have any  
10:58 15 specific questions about them, we don't work one to the  
16 other. Remember, we talked about state court may be  
17 different. If you have a question that you spot, valid, you  
18 want to talk to the lawyer about their position, you may ask  
19 them one at a time.

10:58 20 MR. ZUMMO: Well, as lawyers -- Juror No. 17, as a  
21 lawyer, do you think you'll have any problem following the  
22 Judge's instructions on the law of this case?

23 PROSPECTIVE JUROR: No.

24 MR. ZUMMO: And, Mr. [REDACTED], the same question to  
10:59 25 you. As a lawyer, will you have any problem following

*Jury Selection*

1 Judge Hittner's instructions as they apply to the law of  
2 this case?

3 PROSPECTIVE JUROR: No.

4 MR. ZUMMO: I wouldn't expect any different answer  
10:59 5 on that.

6 As jurors, if you're selected on our jury,  
7 you'll be asked to evaluate the believability of the  
8 witnesses.

9 People can be believable or not believable for  
10:59 10 a lot of reasons. Maybe somebody thinks they saw something,  
11 but they didn't really see it. Sometimes people have a  
12 memory problem that they don't remember things accurately.  
13 Sometimes people are just not being honest.

14 And in our -- There are some folks that -- and  
10:59 15 this is not being critical, but there are some people who  
16 have reservations about wanting to sit in judgment on the  
17 honesty or the believability of other people.

18 Is there anyone on this panel who has any  
19 moral, philosophical, religious reason that you would not be  
11:00 20 able to judge the credibility or the believability of the  
21 witnesses that testify in this trial?

22 Nobody's answered. That means everybody can  
23 do the job of a juror here.

24 The -- This lawsuit, as Judge Hittner said,  
11:00 25 involves copyright infringement claims, and the copyrights

*Jury Selection*

1 that we are here about are copyrights in building designs,  
2 building plans and building drawings.

3 I want to ask a general question about  
4 copyright law. Is there anyone here who has a problem or a  
11:00 5 concern about the fact that some things are protected by  
6 copyright?

7 I see no hands.

8 Is there anyone who thinks that, while you  
9 might agree that copyright law is appropriate, you don't  
11:01 10 think that building designs or architectural plans are  
11 deserving of copyright protection?

12 I don't see any hands.

13 So, at the end of this case, can we understand  
14 that nobody who's picked on this jury will have any problem  
11:01 15 following Judge Hittner's instructions as to --

16 THE COURT: Well, we already had that. Next  
17 question, please.

18 MR. ZUMMO: I want to ask about some -- whether you  
19 may have particular experiences that are relevant to the  
11:01 20 people and the parties that are in this case.

21 Is there anybody on this panel who has been --  
22 worked as an architect or a home designer or have you worked  
23 in that business?

24 And, Ms. [REDACTED], we know that you're an  
11:02 25 architect.

*Jury Selection*

1 Has anybody else -- Have you ever worked in  
2 that business?

3 MR. ZUMMO: Juror No. 15.

4 THE COURT: Yes, sir. Do you want to stand, sir,  
11:02 5 please.

6 PROSPECTIVE JUROR 15: [REDACTED].

7 MR. ZUMMO: Yes, sir. And what's the nature of  
8 that work that you've done in that business?

9 PROSPECTIVE JUROR 15: Marketing rep.

11:02 10 MR. ZUMMO: Thank you, sir.

11 Is anyone here -- Are you working now or have  
12 you ever worked in the business of being a homebuilder or a  
13 real estate developer?

14 I don't see any hands.

11:02 15 Has anyone ever worked -- One of the parties  
16 in this case is a real estate firm that part of their  
17 business is to bring together home designers and builders.

18 Has anybody ever worked in that type of a real  
19 estate business?

11:02 20 I don't see any hands. Thank you.

21 And has anyone here ever been a realtor, a  
22 real estate agent or a real estate broker or worked for that  
23 kind of a company?

24 There's no hands. Thank you.

11:03 25 So, we really only have --- Let me ask this,

*Jury Selection*

1 then: For all of those businesses, whether it's architects  
2 and home designers, realtors, homebuilders, developers,  
3 other real estate firm -- and I'm not limiting this to  
4 people who have worked in that business -- has anybody ever  
11:03 5 had an experience with one of those businesses or those  
6 professionals that would make you not be able to be a fair  
7 and impartial juror on this case without having heard any of  
8 the evidence in this case?

9 PROSPECTIVE JUROR 24: 24.

11:03 10 THE COURT: All right. Yes, sir. Juror No. --

11 PROSPECTIVE JUROR 24: 24.

12 THE COURT: 24. We'll call you up later, sir.

13 MR. ZUMMO: So, besides Juror No. 24, does anyone  
14 else have an experience or do you have an opinion or a  
11:03 15 concern about the businesses that I listed or the types of  
16 professionals that I listed that would make it difficult for  
17 you to be where you could not be a fair and impartial juror  
18 in this case before you've heard any of the evidence?

19 Thank you.

11:04 20 The particular designs, the types of houses  
21 that are at issue in this case, are what are known as  
22 townhouses. And I have a question about the subject of  
23 townhouse development in Houston, and I'd like to just ask  
24 it this way.

11:04 25 Some people think that the -- it's a good

*Jury Selection*

1 thing that new houses -- new townhouses are being built in  
2 neighborhoods, that that's a positive thing for development  
3 of our community and our economy.

4 Other people have concerns that building new  
11:04 5 townhouses in older neighborhoods is hurting the character  
6 of those neighborhoods or hurting the people who live in  
7 these neighborhoods. And this is sometimes called  
8 "gentrification".

9 Is there anybody on this panel who falls into  
11:05 10 that second group?

11 Juror No. 15?

12 PROSPECTIVE JUROR 15: Yes.

13 MR. ZUMMO: Can you just stand up so...

14 And your name, sir?

11:05 15 PROSPECTIVE JUROR 15: [REDACTED].

16 MR. ZUMMO: All right, sir. And, Mr. [REDACTED] you  
17 just have a concern about that type of development?

18 PROSPECTIVE JUROR 15: Yes.

19 MR. ZUMMO: And who else raised their hand, please?

11:05 20 Juror No. 27.

21 PROSPECTIVE JUROR 27: The same as before.

22 MR. ZUMMO: And your name, please?

23 PROSPECTIVE JUROR 27: [REDACTED].

24 MR. ZUMMO: And Juror No. 28?

11:05 25 PROSPECTIVE JUROR 28: Same.



*Jury Selection*

1 MR. ZUMMO: The same concern. Does anyone else on  
2 the panel have a concern that, despite the positive economic  
3 development that may be occurring, that building townhouses  
4 or new homes in older neighborhoods can be a concern?

11:05 5 Thank you all for listening to and considering  
6 that question.

7 One of the issues in this case, as Judge  
8 Hittner explained, is that, under the copyright law, we  
9 believe, and we think Judge Hittner will instruct you, that,  
11:06 10 if the jury finds that there has been infringement, the  
11 copyright owner can recover the profits of the  
12 infringer from the infringer.

13 Is there anyone who has a problem with that  
14 concept, that if someone infringes another person's  
11:06 15 copyright, that the copyright owner can recover the profits  
16 from the infringer?

17 I don't see any hands.

18 In connection with that, in the system, the  
19 way Congress wrote the law, Congress split the burden of  
11:06 20 proving these profits, and the law specifically says that --  
21 and we believe Judge Hittner will instruct you as to this --  
22 that the copyright owner has to prove what the defendants'  
23 gross revenues were from the infringement and the defendant  
24 has to prove any expenses that the defendant says should be  
11:07 25 deducted from the revenue or any other deductions for what

*Jury Selection*

1 are called "factors not attributable to the copyrighted  
2 work".

3 Is there anyone on this panel who has a  
4 problem with that way that the law was written, to say that  
11:07 5 one side has the burden of proving revenues and the other  
6 side has the burden of proving deductions?

7 There's no hands.

8 And then the last subject about the law that I  
9 would like to ask you about is we believe that Judge Hittner  
11:07 10 will also instruct this jury that, under certain  
11 circumstances when certain requirements are met, a business  
12 owner can be held responsible for infringements that are  
13 committed by the business.

14 If that is what the law turns out to be, is  
11:08 15 there anyone on this panel who will have a problem with  
16 following that law?

17 Well, as I said a minute ago, we have these  
18 information forms. I only have, I think, four specific  
19 questions for some of the jurors -- some of the panel  
11:08 20 members based on these forms, and I'd just like to ask you  
21 those now.

22 Juror No. 2.

23 PROSPECTIVE JUROR 2: [REDACTED].

24 MR. ZUMMO: Your company is called -- Is it Cima  
11:08 25 Inspection?

*Jury Selection*

1 PROSPECTIVE JUROR 2: That's where I formally work.  
2 Right.

3 MR. ZUMMO 2: And what type of business is that?

4 PROSPECTIVE JUROR 2: It's an oil and gas vessel  
11:08 5 and tank inspection company.

6 MR. ZUMMO: Thank you.

7 Ms. [REDACTED], Juror No. 4.

8 PROSPECTIVE JUROR 4: Yes.

9 MR. ZUMMO: You've been at Texas Gulf Bank for  
11:09 10 eight months. Is the bank -- Is it working in banking?

11 THE COURT: That's Missouri City.

12 MR. ZUMMO: Oh. Missouri -- Okay. I'm sorry.  
13 That was it. Okay.

14 How long have you been at Texas Gulf Bank?

11:09 15 PROSPECTIVE JUROR 4: Almost three years next  
16 month.

17 MR. ZUMMO: I just misread the form. Sorry to  
18 bother you with that.

19 And then -- let's see -- Juror No. 6,

11:09 20 Ms. [REDACTED].

21 PROSPECTIVE JUROR 6: Yes.

22 MR. ZUMMO: It says that your husband is retired.

23 What was your husband's type of work before he  
24 retired?

11:09 25 PROSPECTIVE JUROR 6: Core analysis. It was in the

*Jury Selection*

1 oil field company.

2 MR. ZUMMO: Analyzing those cores that they bring  
3 up out of the well?

4 PROSPECTIVE JUROR 6: Yes. Core welder  
11:09 5 specialties.

6 MR. ZUMMO: Thank you, ma'am.

7 And then Juror No. 15, Mr. [REDACTED].

8 First of all, I would like to thank you for  
9 serving our country in the Air Force. And your highest rank  
11:10 10 was an E-5.

11 What was your specialty?

12 PROSPECTIVE JUROR 6: Accounting.

13 MR. ZUMMO: Well, Judge Hittner has told you and  
14 shown you his three --

11:10 15 THE COURT: An E-5 is staff sergeant?

16 PROSPECTIVE JUROR 6: Yes, sir.

17 THE COURT: Okay.

18 MR. ZUMMO: A lot of times lawyers have a hard time  
19 getting picked on juries, but I had the honor, also, and the  
11:10 20 privilege of being selected for a jury in state court in the  
21 mid-1990s.

22 THE COURT: Who was the judge?

23 MR. ZUMMO: Judge Katie Kennedy.

24 THE COURT: One thing is you never forget who the  
11:10 25 judge is one way or the other.

*Jury Selection*

1 Okay. Go on.

2 MR. ZUMMO: And it was a very good experience for  
3 me not just as a citizen but as a lawyer, because I saw it  
4 from the jury side of the rail. I actually saw how things  
11:10 5 that I thought were normal for lawyers to do just bore you  
6 to tears.

7 So, ever since then, I have tried to move my  
8 cases along because I understand now that we don't have to  
9 ask the same question five times to make sure people got it.

11:11 10 I hope that we can do that during this trial,  
11 and I hope that -- You know, I had 30 minutes and I've taken  
12 less than that 30 minutes, and I hope that we can continue  
13 to move things along quickly so that this is a fair,  
14 efficient, good trial and a good experience for all of you.

11:11 15 We do appreciate your being here and assisting  
16 us in this dispute. I personally think that the jury system  
17 is the very best way to resolve conflicts, and I'm glad that  
18 you're here now.

19 Thank you, Your Honor.

11:11 20 THE COURT: Thank you.

21 All right. We'll now hear from the defense.

22 Counsel.

23 MR. STROTHER: May I please the Court.

24 THE COURT: Yes, sir.

11:11 25 MR. STROTHER: Good morning.

*Jury Selection*

1 PROSPECTIVE JURORS: Good morning.

2 MR. STROTHER: And thank you, Mr. Zummo.

3 Let me begin by saying I think that those who  
4 are selected for this trial are going to see a good trial.

11:12 5 The attorneys on the other side from me are skilled.

6 You may see a professional slug-fest between  
7 the attorneys, but I think that we get along on a personal  
8 level, and I think that those of you who are selected will  
9 profit from that.

11:12 10 While it's true that those who are going to be  
11 on this jury are going to be the finder of fact, this isn't  
12 necessarily what some people would call a he said/she said.  
13 I don't think that you're going to see a lot of dispute  
14 about what happened and what didn't happen, but there will  
11:12 15 be some of it.

16 I think your job is going to be a little more  
17 complicated than that, and it gets into some of the defenses  
18 that Judge Hittner told you the Defendants were going to be  
19 raising in this case. I'm going to ask you about your  
11:12 20 feelings about some of those defenses in a minute.

21 But first let me ask -- First of all,  
22 Mr. Zummo asked a number of questions that I was good to  
23 ask; so, while I have 30 minutes, I will probably only take  
24 half of that time.

11:13 25 We know that we have an architect there on the

*Jury Selection*

1 panel, but are there any people out there that have  
2 architects in the family?

3 Yes, ma'am. Juror No. 6. Who in your family  
4 is an architect?

11:13 5 PROSPECTIVE JUROR 6: Yeah. My son-in-law.

6 MR. STROTHER: Okay. Yes, ma'am. No. 18.

7 PROSPECTIVE JUROR 18: My husband.

8 MR. STROTHER: Okay. As to both of you, is there  
9 anything about having an architect in your family that you  
11:13 10 think, without hearing any of the evidence, is going to make  
11 you biased one way or the other?

12 THE COURT: Hold it. Juror 27. We had another  
13 hand up.

14 MR. STROTHER: I'm sorry, sir.

11:13 15 No. 27, who in your family?

16 PROSPECTIVE JUROR 27: My wife.

17 MR. STROTHER: Do you think there's anything about  
18 you being married to an architect that would make you biased  
19 in this case without hearing any of the facts?

11:13 20 PROSPECTIVE JUROR 27: [Indicating negatively].

21 THE COURT: You're shaking your head "no". I want  
22 to make sure our court reporter --

23 PROSPECTIVE JUROR 27: No. I don't think so.

24 MR. STROTHER: What about -- Are there any  
11:14 25 homebuilders in your family, people that are responsible for

*Jury Selection*

1 building homes or maybe even a subcontractor that does  
2 something significant to build a home?

3 Yes, sir. Juror No. 26.

4 THE COURT: Yes, sir. Do you want to stand up,  
11:14 5 please.

6 PROSPECTIVE JUROR 26: My uncle. He's a  
7 homebuilder. He works for David Weekley.

8 MR. STROTHER: Okay. Thank you very much.

9 And I'll follow up your answer -- thank you --  
11:14 10 with a question. Is there anything about your uncle being a  
11 homebuilder with David Weekley that you think would make you  
12 biased in this case without hearing any of the evidence?

13 PROSPECTIVE JUROR 26: No.

14 MR. STROTHER: Have any of you or have any of your  
11:14 15 close family members ever hired an architect to do any work?

16 Yes, sir. No. 15.

17 PROSPECTIVE JUROR 15: Yes.

18 MR. STROTHER: Is there anything about that  
19 experience that would make you biased in this case one way  
11:15 20 or the other without hearing any of the evidence?

21 PROSPECTIVE JUROR 15: No.

22 MR. STROTHER: Was that for a residence or --

23 PROSPECTIVE JUROR 15: Yes.

24 MR. STROTHER: Anyone else?

11:15 25 And, as Mr. Zummo said, the designs at issue



*Jury Selection*

1 in this case have to do with townhomes.

2 Have any of you shopped for a townhome in the  
3 Houston market in the past 20 or 30 years? Keep your hands  
4 up and let me make sure I write your numbers down, please.

11:15 5 Juror No. 18 and Juror No. 26.

6 Yes, ma'am. Juror No. 12.

7 Was there someone on the front row that had  
8 their hand raised?

9 Let me broaden the question before I ask the  
11:15 10 follow-up. Is there anyone that has participated with a  
11 family member or a close friend in shopping for a townhome  
12 in the Houston market in the past 30 years?

13 Yes, ma'am.

14 PROSPECTIVE JUROR: A townhome would be  
11:16 15 considered --

16 THE COURT: I can't hear, whoever it is. Ma'am,  
17 who is it -- Yes, ma'am.

18 PROSPECTIVE JUROR: I said a townhome would  
19 consider also as city homes, the new style of the buildings?

11:16 20 MR. STROTHER: Thank you for your question. Let me  
21 see if I can answer what I mean by a "townhome" and what I  
22 think -- I think everyone will agree.

23 Generally, we're talking new construction that  
24 are usually multi-story and -- but they're separate family  
11:16 25 residences. Right? They're not talking about like a

*Jury Selection*

1 condominium design. But there are usually multiple  
2 townhomes identical to each other and it's part of the same  
3 development.

4 So, some of the developments in this case  
11:16 5 would pertain to two townhomes and up to maybe 16 or  
6 20 townhomes, and I could be off on that number.

7 Does that help answer your question?

8 PROSPECTIVE JUROR: Yes, sir.

9 MR. STROTHER: Let me go back to the question  
11:17 10 because some of you raised your hands and I didn't get a  
11 chance to write your numbers down.

12 6, 7 and 8 raised your hands.

13 Was there anyone else in the back that had  
14 helped a close family member or friend shop for a townhome  
11:17 15 in the Houston market?

16 No. 18 as well.

17 So, to all of you that answered that question,  
18 is there anything about your experience in that regard that  
19 you think would make you biased or unfair in this case  
11:17 20 without hearing any of the evidence?

21 Mr. [REDACTED] --

22 PROSPECTIVE JUROR 15: Yes.

23 MR. STROTHER: -- you said that you did -- I'm  
24 sorry -- you're a market rep?

11:17 25 PROSPECTIVE JUROR 15: Yes.

*Jury Selection*

1 MR. STROTHER: What kind of work were you doing and  
2 for whom?

3 PROSPECTIVE JUROR 15: Commercial.

4 MR. STROTHER: Was this for architecture?

11:17 5 PROSPECTIVE JUROR 15: Yes.

6 MR. STROTHER: May I ask who your employer was?

7 PROSPECTIVE JUROR 15: Trevathan Marketing Group.

8 MR. STROTHER: Thank you, sir.

9 PROSPECTIVE JUROR 15: Uh-huh.

11:18 10 MR. STROTHER: I believe that, in this case, you're  
11 going to have an admission from my clients that at least --  
12 Let me back up.

13 I believe we're going to be talking about five  
14 townhome developments, and I believe that my clients are  
11:18 15 going to admit that, at least with regard to one of those  
16 developments, the plans used to construct some of those  
17 units used the Preston Wood plans as a starting point.

18 I have some questions about my client's  
19 defenses to see if you would be biased against them, without  
11:18 20 hearing any of the evidence, of course.

21 One of the points is what Mr. Zummo brought  
22 up, is that the Plaintiff is suing the Defendants for their  
23 profits. It's called "disgorgement" or I call it  
24 "disgorgement of profits".

11:18 25 And he mentioned the issue that they have the

*Jury Selection*

1 burden of proof on proving the gross revenue -- or I would  
2 say "gross profit" -- and then the burden shifts over to my  
3 clients to then put on proof of what expenses they connect  
4 to those gross profits, therefore, getting to net profits.

11:19 5 So, one of the defenses that my clients are  
6 going to raise is by saying, 'Okay. If we earned X dollars  
7 from the sale of this townhome, we have expenses that were  
8 incurred to sell that townhome.'

9 Is there anyone that is innately biased or  
11:19 10 prejudiced against my client for taking that position?

11 PROSPECTIVE JUROR 7: [Raising hand].

12 MR. STROTHER: Yes, ma'am.

13 THE COURT: Yes, ma'am. We'll talk to you later.

14 That defense goes a little bit further  
11:19 15 because, while my clients will be putting on evidence of  
16 direct expenses, they will also be putting on evidence of  
17 their overhead that they would also like to connect to the  
18 gross profits received.

19 Are there any of you that are innately biased  
11:19 20 or prejudiced against that position?

21 PROSPECTIVE JUROR 7: [Raising hand].

22 MR. STROTHER: Yes, ma'am. No. 7.

23 Yes, sir. No. 21.

24 THE COURT: Yes, sir. Do you want to stand up,  
11:20 25 please.

*Jury Selection*

1 MR. STROTHER: Just to confirm, you would be biased  
2 against my client, arguing that overhead should be deducted  
3 from their gross profits?

4 PROSPECTIVE JUROR 21: Yes.

11:20 5 MR. STROTHER: I should preface most -- maybe all  
6 of these questions with: We anticipate that Judge Hittner  
7 is going to give you written instructions about what you  
8 should and should not consider.

9 So, my question about overhead would be: If  
11:20 10 Judge Hittner instructed you -- Juror No. 21, for example,  
11 if Judge Hittner instructed you that you are to consider  
12 overhead --

13 THE COURT: Excuse me. I'm not going to pin down  
14 that way. So, you can rephrase the question.

11:20 15 MR. STROTHER: Yes, Your Honor. I'll move on.

16 THE COURT: Now, do you want to call 24 up later or  
17 not? Are you ready to move on?

18 MR. STROTHER: I'm ready to move on, Your Honor.

19 THE COURT: Okay.

11:20 20 MR. STROTHER: I think you meant No. 21, Your  
21 Honor?

22 THE COURT: 21, rather.

23 MR. STROTHER: Thank you.

24 One of the instructions that we anticipate the  
11:20 25 Court might instruct you about is that copyrightable works

*Jury Selection*

1 are composed of protectable and unprotectable elements.

2 If that instruction is given, my clients would  
3 be arguing that that copyrighted plans that Preston Wood had  
4 copyrighted had some non-protected and non-protectable  
11:21 5 elements.

6 Are there any of you out there that are  
7 innately biased or prejudiced against my client taking that  
8 position?

9 PROSPECTIVE JUROR: [Raising hand].

11:21 10 MR. STROTHER: Yes, ma'am. No. 7.

11 Is there anyone that agrees with Ms. [REDACTED]?

12 THE COURT: No. Rephrase it. It's not agreeing  
13 with one versus the other.

14 MR. STROTHER: I'm sorry, Your Honor.

11:21 15 THE COURT: Just ask the general questions or  
16 specific to one juror.

17 MR. STROTHER: Yes, Your Honor.

18 Is there anyone else who believes that they  
19 would be biased or prejudiced against my client for taking  
11:21 20 the position that the copyrighted plans have some  
21 non-protectable elements in those plans?

22 And, finally, on the defenses for now, another  
23 issue that you will certainly be asked to determine, guided  
24 by the Court's instructions, is what percentage of profits  
11:22 25 were attributable to things other than the infringement.

### Jury Selection

1                   My clients will come up with some examples of  
2   things that led to, for example, the sales price of a  
3   townhome being what it was, whether it be the cost of the  
4   land or something like that.

11:22 5 Are there any of you out there who are  
6 innately biased or prejudiced against my client if they take  
7 that position?

8 PROSPECTIVE JUROR 15: [Raising hand].

9 MR. STROTHER: Yes, sir.

11:22 10 THE COURT: Okay. Thank you, sir. We'll call you  
11 back up. Okay. That's No. --

12 MR. STROTHER: 15.

13 THE COURT: -- 15. Okay.

14 MR. STROTHER: Ladies and gentlemen, I appreciate  
11:22 15 it. Thank you for your time. And we look forward to  
16 presenting our case to those of you that are ultimately  
17 selected.

18 THE COURT: All right. I told you it was going to  
19 move quickly, and it did.

11:22 20 All right. May I see the attorneys up here  
21 with your sheets, please.

22 (At the bench)

23 THE COURT: I have to call forward 7, 15 and 24.

24 Correct?

11:23 25 MR. ZUMMO: Also, 21 said he was innately biased.

*Jury Selection*

1 THE COURT: But you can -- Let's see. That was in  
2 answer to whose question?

3 MR. ZUMMO: In answer to Mr. Strother's.

4 THE COURT: You said you didn't want to call him  
11:24 5 up. Right?

6 MR. STROTHER: No. I said I was -- I'm sorry. I  
7 was finished asking the question.

8 THE COURT: That's right. You didn't ask him to  
9 come forward.

11:24 10 MR. ZUMMO: He's probably out of reach anyway.

11 THE COURT: All right. What number is that?

12 MR. ZUMMO: No. 21.

13 THE COURT: Let's call up 21.

14 MR. STROTHER: Your Honor, you also mentioned  
11:24 15 calling up the attorney, Juror No. 17.

16 THE COURT: I don't remember doing that.

17 MR. ZUMMO: Well, she's a prosecutor, Your Honor.  
18 That's important to me.

19 THE COURT: Prosecutor. A whole family of  
11:24 20 prosecutors.

21 MR. ZUMMO: Right.

22 THE COURT: No, I'm not calling her up.

23 If you wanted someone to call up, you just  
24 keep asking questions till it got to the point... And I  
11:24 25 would just add I will allow you to call that other one up.



*Jury Selection*

1 All right. They're going to come up this  
2 side. So, when they come up, just step back and let them go  
3 right in front of the microphone. You don't -- If you want  
4 to step down.... But, in any event --

11:25 5 MR. STROTHER: May I ask for some clarification? I  
6 misunderstood you with regard to Juror No. 17. I thought  
7 you were bringing her up. So, I --

8 THE COURT: I'm not bringing anybody up.

9 MR. STROTHER: Could I explain, Your Honor? My  
11:25 10 client, Ms. Cameron, knows her.

11 THE COURT: Come here. Come on.

12 MR. STROTHER: My client, Angela Cameron, knows  
13 Juror No. 17. I didn't ask any questions because I  
14 misunderstood the Court's instruction.

11:25 15 THE COURT: What instruction did you misunderstand?

16 MR. STROTHER: When he was asking about attorneys  
17 and you said you don't need to ask any more questions or --  
18 I thought that you were writing down that she was coming up.

19 THE COURT: No.

11:25 20 MR. STROTHER: I misunderstood that.

21 THE COURT: You didn't go into it, though, did you?

22 MR. STROTHER: I didn't. But she --

23 THE COURT: She knows --

24 MR. STROTHER: My client knows her.

11:25 25 THE COURT: Well, what do you want to do?

*Jury Selection*

1 MR. ZUMMO: Mr. Strother's client is a public  
2 defender and 17 is a prosecutor. So, they probably know  
3 each other as adversaries in the courtroom.

4 THE COURT: Well --

11:25 5 MR. ZUMMO: I don't know that she needs to --

6 THE COURT: I'm not going to call her up. But now  
7 we know about it, anyhow.

8 All right. The first one is [REDACTED]. This  
9 is No. 7. Right?

11:26 10 (In open court)

11 THE COURT: All right. No. 7, Miss [REDACTED], do  
12 you want to come up, please.

13 (At the bench)

14 THE COURT: How are you doing?

11:26 15 PROSPECTIVE JUROR 7: Fine.

16 THE COURT: There's your microphone right there.

17 You have a concern about sitting on this jury  
18 or not?

19 PROSPECTIVE JUROR 7: Yeah.

11:26 20 THE COURT: Okay.

21 Questions.

22 MR. ZUMMO: What is your concern? What makes you  
23 think you can't be fair and impartial?

24 PROSPECTIVE JUROR 7: Well, being an architect and  
11:26 25 seeing how plans and designs --

*Jury Selection*

1 THE COURT: Keep your voice down.

2 PROSPECTIVE JUROR 7: This is recording. I  
3 understand.

4 Seeing how they are abused often, I have a  
11:27 5 certain bias towards that and attitude towards that.

6 THE COURT: Do you think you can be fair and  
7 impartial in this case without having heard any of the  
8 evidence? On this case.

9 PROSPECTIVE JUROR 7: I don't think I would be  
11:27 10 fair.

11 THE COURT: Okay. Any questions?

12 Thank you, ma'am.

13 THE COURT: Just thank you, ma'am. Take your seat.  
14 Thank you.

11:27 15 All right. Come on in.

16 Do we have any challenge on No. 7?

17 MR. ZUMMO: We move to strike No. 7 for cause, Your  
18 Honor.

19 MR. STROTHER: No objection.

11:27 20 THE COURT: The next one I have is 15, bias or  
21 prejudice. That's Mr. [REDACTED], his last segment.

22 (In open court)

23 THE COURT: Mr. [REDACTED], please, No. 15.

24 (At the bench)

11:28 25 THE COURT: There's the microphone. Stand right in

*Jury Selection*

1 front of it.

2 PROSPECTIVE JUROR 15: Your Honor, I think --

3 THE COURT: You can look at me. It will pick it  
4 up. If Bruce can't pick it up he'll let me know. Okay?

11:28 5 PROSPECTIVE JUROR 15: Your Honor, I think I'm a  
6 little too familiar with Urban Living.

7 THE COURT: Oh. Okay. You know that firm?

8 PROSPECTIVE JUROR 15: Yes.

9 THE COURT: Okay.

11:28 10 PROSPECTIVE JUROR 15: And I know their work.

11 THE COURT: So, you feel you couldn't be fair and  
12 impartial on this case, having known at least one of the  
13 parties?

14 PROSPECTIVE JUROR 15: Yes.

11:28 15 THE COURT: Any questions?

16 MR. ZUMMO: No questions.

17 THE COURT: Any questions?

18 MR. STROTHER: No questions.

19 THE COURT: Thank you, sir. Have a seat.

11:28 20 Come on in.

21 All right. Do you join in that challenge?

22 MR. STROTHER: Yes, Your Honor.

23 MR. ZUMMO: Yes, sir.

24 THE COURT: By agreement?

11:28 25 MR. ZUMMO: Yes, sir.

*Jury Selection*

1 THE COURT: The next one is 21.

2 (In open court)

3 THE COURT: Mr. [REDACTED], No. 21, please.

4 (At the bench)

11:29 5 THE COURT: He made a comment relative to which  
6 questions?

7 MR. ZUMMO: I postured about overhead.

8 THE COURT: Oh, yeah.

9 That's the microphone.

11:29 10 All right. You had a concern, sir, concerning  
11 overhead and that's why I cut you off.

12 So, would you explain what your concern is or  
13 what your feeling is.

14 PROSPECTIVE JUROR 21: I was afraid that -- eat up  
11:29 15 the profits by charging their salaries and overhead. So,  
16 they're profiting from something they shouldn't have gained.  
17 I just don't think that's fair.

18 THE COURT: He answered that to your question. You  
19 go first, follow up.

11:30 20 MR. STROTHER: Sir, if Judge Hittner instructs you  
21 that you are to include overhead, are you going to be able  
22 to follow that instruction?

23 PROSPECTIVE JUROR 21: I think, if he tells me to,  
24 I would.

11:30 25 MR. ZUMMO: I don't have any other questions, Your

*Jury Selection*

1 Honor.

2 THE COURT: All right. Thank you, sir.

3 Do we have any challenge on No. 21?

4 MR. STROTHER: Your Honor, I move to strike him for  
11:30 5 cause.

6 THE COURT: Response?

7 MR. ZUMMO: No objection.

8 THE COURT: No objection. Okay.

9 MR. ZUMMO: Make it easy.

11:30 10 THE COURT: No objection to 21, [REDACTED].

11 The last one we have is 24.

12 MR. ZUMMO: When I asked the general question about  
13 all of the different businesses, if you had an experience  
14 that would make you not be fair and impartial -- So, we  
11:31 15 don't know what his particular concern is, Your Honor.

16 THE COURT: That's number -- is it a man?

17 MR. ZUMMO: It's a man, [REDACTED].

18 (In open court)

19 THE COURT: Mr. [REDACTED], No. 24, please. Do you  
11:31 20 want to come up, sir, please.

21 (At the bench)

22 THE COURT: Yes, sir. There's your microphone.

23 Yes, sir. What was your concern?

24 PROSPECTIVE JUROR 24: I work for an oil company  
11:31 25 and we work with a lot of architects directly.

*Jury Selection*

1 THE COURT: Okay.

2 PROSPECTIVE JUROR 24: So, question was?

3 THE COURT: And the question was?

4 PROSPECTIVE JUROR 24: I think the question was any

11:31 5 relation with -- any connection with the architects, and I

6 just thought to say that I do work with the architects.

7 THE COURT: Okay. Well, you raised your hand,

8 what, during your --

9 MR. ZUMMO: My questions.

11:31 10 THE COURT: Yeah. Go on. Follow up.

11 MR. ZUMMO: The question that I asked -- and I hope

12 I wasn't unclear -- is: Is there anything about your

13 experience with the businesses, such as architects, that

14 would mean that you could not be fair and impartial as a

11:32 15 juror in this case before you've heard any evidence?

16 PROSPECTIVE JUROR 24: No.

17 MR. ZUMMO: And you could not be fair?

18 PROSPECTIVE JUROR 24: I could be fair, yes, but I

19 just wanted to mention that I do work with the architects.

11:32 20 MR. ZUMMO: You haven't had negative experiences --

21 PROSPECTIVE JUROR 24: No.

22 MR. ZUMMO: -- that would make you think all

23 architects are either good or bad?

24 PROSPECTIVE JUROR 24: No.

11:32 25 THE COURT: Both sides start equal? Both sides.

*Jury Selection*

1 PROSPECTIVE JUROR 24: Yes.

2 THE COURT: Questions?

3 MR. STROTHER: No.

4 THE COURT: Thank you, sir.

11:32 5 PROSPECTIVE JUROR: Thank you.

6 THE COURT: Do we have a challenge on 21?

7 MR. STROTHER: No.

8 MR. ZUMMO: No.

9 THE COURT: All right. Being a state practitioner,  
11:32 10 I didn't want to catch you flat-footed. All right? In the  
11 federal system, we have eight on the jury.

12 (Case manager whispers to the Court)

13 THE COURT: What?

14 CASE MANAGER: The catch-all question.

11:32 15 THE COURT: Oh, yeah. That's right.

16 Just stay right here. That catch-all question I  
17 forgot.

18 (In open court)

19 THE COURT: All right. I said it was going to move  
11:33 20 along fast, and it is. I'm going to ask you one last  
21 question. Okay? Then we'll get right along to the jury  
22 selection.

23 If there's anything I haven't asked, the  
24 attorneys haven't asked, and it's not on your sheet that you  
11:33 25 feel you would have a concern about serving as a juror on



*Jury Selection*

1 this case, an extremely short case for federal court,  
2 really, if you would, raise your hand at this time. Okay.

3 (At the bench)

4 THE COURT: Come on up, Ellen.

11:33 5 Who is the first one? No. 16.

6 MR. ZUMMO: The very first one on Page 2.

7 (In open court)

8 THE COURT: Miss [REDACTED], please, No. 16. Do you  
9 want to come up, please.

11:34 10 (At the bench)

11 THE COURT: Yes, ma'am. There's your microphone.  
12 Come on up.

13 Yes, ma'am. What's your concern?

14 PROSPECTIVE JUROR 16: It's just that I will be  
11:34 15 traveling Friday evening from Houston to Atlanta and won't  
16 be returning until Monday.

17 THE COURT: What time -- when will you be returning  
18 Monday?

19 PROSPECTIVE JUROR 16: The flight comes in at 8:00  
11:34 20 in the morning.

21 THE COURT: 8:00 in the morning?

22 PROSPECTIVE JUROR 16: Yes.

23 THE COURT: Okay. And Friday what time is the  
24 plane?

11:34 25 PROSPECTIVE JUROR 16: Leaves at 8:00 p.m.

*Jury Selection*

1 THE COURT: At night?

2 PROSPECTIVE JUROR 16: Yes.

3 THE COURT: Okay. Number one, I told the attorneys  
4 we're going to adjourn early on Friday.

11:34 5 PROSPECTIVE JUROR 16: Okay.

6 THE COURT: We're going to adjourn at 4:30. And if  
7 you get in at 8:00 -- We usually begin at 10:00. Would that  
8 be okay with you?

9 PROSPECTIVE JUROR 16: I think so.

11:34 10 THE COURT: And if by any chance the flight is  
11 late, you can either check and wait on it or, you know, we  
12 have to go with at least six jurors. So, there's a way to  
13 work with this. Okay? I'm just saying there's a way to  
14 work with this.

11:35 15 PROSPECTIVE JUROR 16: Okay.

16 THE COURT: Any problem with that?

17 PROSPECTIVE JUROR 16: No.

18 THE COURT: Okay. Thank you, ma'am.

19 PROSPECTIVE JUROR 16: Okay.

11:35 20 THE COURT: Come on up.

21 Do we have any challenge on 16?

22 MR. ZUMMO: No, Your Honor.

23 MR. STROTHER: No.

24 THE COURT: Now, keep in mind, if the plane is  
11:35 25 late, we'll talk about it as to -- Let's see how late it's

*Jury Selection*

1 going to be and, if she's on the jury, we can go with seven  
2 instead of eight. Okay? That's why we have a little bit of  
3 flexibility.

4 CASE MANAGER: 28.

11:35 5 (In open court)

6 THE COURT: 28. Juror No. 28, Mr. [REDACTED],  
7 please.

8 (At the bench)

9 THE COURT: How are you doing? There's the  
11:36 10 microphone. Just step back about a half a step. That's it.

11 PROSPECTIVE JUROR 28: Yeah. My issue is really a  
12 hardship issue. I'm hosting a large group of corporate  
13 visitors into West Texas and New Mexico next week.

14 THE COURT: When next week?

11:36 15 PROSPECTIVE JUROR 28: Monday through Friday.

16 THE COURT: Are you running the program?

17 PROSPECTIVE JUROR 28: Yes. I am the manager and I  
18 am running the program.

19 THE COURT: Okay. Questions?

11:36 20 MR. STROTHER: No questions, Your Honor.

21 MR. ZUMMO: No questions, Your Honor.

22 THE COURT: Thank you, sir.

23 Will you agree on excusing 28?

24 MR. ZUMMO: Yes, sir.

11:36 25 MR. STROTHER: Yes, Your Honor.

*Jury Selection*

1 THE COURT: Now -- That's it, Ellen. Right?

2 Okay. Now, the reason why -- I was about to  
3 do this. Ellen is adding it all up. We have eight on the  
4 jury. Right? We have three strikes each in federal court.

11:36 5 So, 14 is in the panel. So, we already have out No. 6.  
6 Right?

7 MR. ZUMMO: 7.

8 THE COURT: No. In the lower panel. 14, right, is  
9 in the panel.

11:37 10 CASE MANAGER: Correct.

11 THE COURT: No. 7 is out.

12 CASE MANAGER: Correct.

13 THE COURT: That's it for right now, the lower  
14 panel right now. And then Mr. [REDACTED]. That would put  
11:37 15 minus one in the lower. That would put 15 in the panel.  
16 But 15 is also out; so, now we have No. 16 in the panel.  
17 All right?

18 MR. STROTHER: Yes, Your Honor.

19 THE COURT: Now, also -- This is up to you.

11:37 20 We have -- also, 21 is out and 28 is out. So,  
21 how many does that leave?

22 CASE MANAGER: 11.

23 THE COURT: 11. So, it would be 10.

24 Now, this is where you get a little bit  
11:38 25 different. We have three and three strikes. All right?

*Jury Selection*

1 No. 16 right now is in the panel. You can't go further than  
2 that.

3 But counting up all the jurors to the end,  
4 there's another 10 that haven't been struck. If you want,  
11:38 5 I'll give each guy an additional five. That will be eight  
6 strikes and eight strikes and use the whole panel. It's  
7 strictly up to you. You've never heard that before.

8 MR. STROTHER: I've never heard that before.

9 That's an interesting idea, but I'm going to  
11:38 10 reject it, Your Honor.

11 MR. ZUMMO: I'm glad to go with the three.

12 THE COURT: No. 16, right, Ellen?

13 No. 16 is in the panel. So, you need to make  
14 your strikes 1 through 16 with the understanding that No. 7  
11:38 15 is out and No. 15 is out.

16 All right. It's now 11:40, let's say. How  
17 much time does the Plaintiff want to make the strikes?

18 MR. ZUMMO: Ten minutes.

19 MR. STROTHER: Ten minutes, Your Honor.

11:39 20 THE COURT: Okay. Because Ellen has to do -- I  
21 need to get them back in at 12:10. That's what? That's  
22 30 minutes.

23 And then all I'm going to do is give them some  
24 instructions and we'll be done.

11:39 25 MR. ZUMMO: Yes, sir.

*Jury Selection*

1 THE COURT: So, I need your sheets back in on  
2 Ellen's desk -- your strike sheets facedown -- not later  
3 than 12:00 noon. And the jury will come back at 12:10.

4 One of you can use the courtroom, and the  
11:39 5 other can go in with your clients into the jury room or in  
6 the back or whatever.

7 Any other questions?

8 MR. STROTHER: No, Your Honor.

9 MR. ZUMMO: No, Your Honor.

11:39 10 THE COURT: I'm going to give them a little bit of  
11 instructions and then you can get going.

12 (In open court)

13 THE COURT: All right. Let me tell you about jury  
14 alleged-called selection.

11:39 15 Each of the attorneys in federal court have  
16 the right to strike through a certain number of names.  
17 We've considered some excuses to strike through a certain  
18 number of names.

19 After they make their strikes separately, they  
11:40 20 give Ellen the sheets, she will put the two sheets side by  
21 side and she'll go over it with a long ruler. The first  
22 eight names she comes to that has no strike on either the  
23 Plaintiff's sheet or the defense sheet forms the jury.

24 So, everybody was visiting with you about  
11:40 25 being selected to serve on a jury. That's not it. In other

*Jury Selection*

1 words, they wanted other people off more than you. So, in  
2 effect, it's a matter of elimination rather than a matter of  
3 selection, so to speak.

4 So, that's how juries work, civil cases,  
11:40 5 criminal cases or whatever. In other words, after we look  
6 at the sheet where there's no strikes on either the  
7 Plaintiff or the defense, or in a criminal case the  
8 government or the defense, that forms the jury.

9 In order to give the attorneys time to do this  
11:41 10 and consult with their clients, we're going to take a short  
11 break.

12 I will tell you what the schedule is going to  
13 be. We're going to adjourn quickly for the day after we  
14 announce who's on the jury and I give you about another  
11:41 15 10 minutes more.

16 So, we're going to move the case right clear  
17 and everybody ought to be out of here not less than -- I'm  
18 thinking about 12:30 today -- okay? -- 1:00 at the very  
19 latest. I'm just letting you know that as far as your  
11:41 20 scheduling for the rest of the day goes.

21 But we're going to take a break and the  
22 attorneys are going to make their strikes and we're going to  
23 get you back in at 12:10. At 12:10, I'll announce who's on  
24 the jury.

11:41 25 Those of you that have not been selected,

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1 you'll get some additional instructions and you'll be free  
2 to leave.

3 And the others, you've got about 10 minutes  
4 more with instructions and then Ellen will visit with you  
11:42 5 quickly in the jury room and that'll be it for the day.

6 The case will move along very quickly. By the  
7 way, when I say it's an extremely short case for federal  
8 court, it really is.

9 I had a good challenge years ago in the 1990s.  
11:42 10 I handled all three City Hall bribery cases. The first one  
11 went almost four months; the second one, about three months;  
12 the other, two and a half months.

13 A couple of years ago, in a major criminal  
14 case, my colleague, Judge Werlein, had a case scheduled for  
11:42 15 seven months and it ended in the fifth month.

16 And about -- God, it's been 50, maybe 60 --  
17 no -- even more than that -- 60-plus years ago in New York  
18 there was IBM civil litigation that lasted over one year  
19 with the same jury. In this case the testimony will be over  
11:42 20 well within one week, well within one week.

21 Now, when you take a break, you're not to  
22 discuss this case with anyone -- okay? -- including each  
23 other. I do want to say, though, you're not excused from  
24 jury duty. You've got to come back.

11:43 25 Why do I say that? Well, in state court, a



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1 voir dire like this may go on much longer, maybe half a day,  
2 but much longer than it does in federal court where we have  
3 all the information, and it moves quickly. Okay?

4 So, we took a break in the voir dire, got the  
11:43 5 jury back in, and one juror was missing. And, so, where is  
6 that juror? Then we confirmed that he had said he had  
7 enough of this darn jury duty; he's going back to work.

8 Well, we knew where he worked. It was that  
9 simple. Now -- Because it was all listed. So, the  
11:43 10 bailiff -- Here we have U.S. marshals assisting in court,  
11 and then, in the state court, it was a deputy sheriff.

12 Called his name. No-show.

13 So, what I did, I got ahold of the sheriff's  
14 department and said, "Give this guy the full business. We  
11:43 15 know where he works."

16 Now, some of you that are a bit older, just a  
17 few, remember, before the trolley -- before the train came  
18 down Main Street, further down Main Street towards Allen's  
19 Landing, there were two groups of stores you found there, a  
11:44 20 number of pawnshops -- that's p-a-w-n -- and you've got shoe  
21 stores.

22 So, by the way, why do I spell that out? I  
23 was down here about ten years telling about this same  
24 story -- okay? -- when one of the court reporters come up  
11:44 25 and said, "Just for sure, how do you spell what you were

*Jury Selection*

1 saying? What kind of" --

2 I said, "P-a-w-n. Why?"

3 She said, "Oh, my goodness." All the court

4 reporters for the first ten years I was down here were

11:44 5 sending the transcripts out p-o-r-n.

6 "Now, wait a minute."

7 Okay. We cleaned that up pretty quick. No  
8 pun intended.

9 But, anyhow, I tell them, "Give him the full  
11:44 10 business. Give him the full business. So, send the  
11 sheriff's car out," I said, "with the sirens going and the  
12 lights flashing and pull up in front of the shoe store."

13 He's fitting a woman with a pair of shoes.  
14 They go in. They collar him. They cuff him. They bring  
11:45 15 him back right in front of the same jury panel because, see,  
16 voir dire is going on.

17 And I had talked to the sheriff's deputy ahead  
18 of time. And I held the guy in contempt of court and  
19 sentenced him to three days in the county jail and a  
11:45 20 100-dollar fine.

21 I was told he had some money in his pocket.  
22 So, he goes down and pays his fine.

23 Then, as we discussed, they brought him back  
24 up in front of the whole group.

11:45 25 And I said, "As an alternative to the

*Jury Selection*

1 jailhouse, I'll give you an alternative. For the next seven  
2 business days, at 9:00 in the morning and 12:00 noon, you  
3 report back to the central jury room and listen to those  
4 juror lectures over and over and over again."

11:45 5 And he did that. He took that option. But it  
6 wasn't -- If you've been on state jury duty, now they do it  
7 all with video. In other words, they have a judge on a  
8 video or whatever explaining it to you.

9 Back then, when we were all running for  
11:46 10 office, you had 400 voters in the morning, 400 in the  
11 afternoon. So, whoever was assigned as the jury judge  
12 looked forward to it because, aside from instructions, maybe  
13 a little bit of campaign business mixed in, meeting all the  
14 voters.

11:46 15 So, he had to listen to that same stuff over  
16 and over for 14 times. He took that instead. So, he saved  
17 his time from the jailhouse.

18 I had one juror during a case. A beautiful  
19 day out.

11:46 20 During a trial it came back, "Where's  
21 Mr. So-and-So?"

22 He said, "I don't know." He said, "Well, we  
23 saw him in the tunnels during the lunch break."

24 And I sent the marshals out looking for him.  
11:46 25 They got a description.

*Jury Selection*

1 He was sacked out, asleep in the sun, in  
2 Tranquility Park. He took a siesta after his lunch.

3 Aside from that, I've never had a problem.  
4 I'm not going to have one here, I know, especially after  
11:47 5 that story.

6 So, we're going to take a break. The  
7 attorneys are going to make their strikes. And we will see  
8 you back outside of this courtroom ready to resume at ten  
9 minutes after 12 o'clock. We'll see you at that time.

11:48 10 (Brief recess)

11 (Venire panel present)

12 THE COURT: Thank you. Please be seated.

13 Ladies and gentlemen, when you come forward,  
14 would you be seated in the jury box.

12:18 15 The first four will be in the front row, the  
16 second four in the back row.

17 CASE MANAGER: Juror No. 2, [REDACTED]. Juror  
18 No. 3, [REDACTED]. Juror No. 9, [REDACTED]. Juror  
19 No. 10, [REDACTED]. Juror No. 11, [REDACTED]. Juror  
12:19 20 No. 12, [REDACTED]. Juror No. 13, [REDACTED].  
21 And Juror No. 14, [REDACTED].

22 THE COURT: Ladies and gentlemen, those of you that  
23 have not been selected, I certainly want to thank you for  
24 your service and, hopefully, you've gained a bit of an  
12:20 25 insight into how the system works in your short visit with

*Preliminary Instructions to the Jury*

1 us.

2 This now completes this session of your jury  
3 service, but don't forget you need to check on the telephone  
4 to see if there are any other cases that may get ready to go  
12:20 5 to court.

6 But, in any event, this completes your jury  
7 service for today. Thank you. You do not need to check out  
8 with the central jury room and, as far as I'm concerned,  
9 you're excused. Thank you so much.

12:20 10 Ladies and gentlemen of the jury, please  
11 stand, raise your right hand, take the juror's oath.

12 (Jury sworn)

13 THE COURT: Thank you. Please be seated.

14 I'm sure the first thing on your mind is how  
12:21 15 long are you going to be here. We're going to move the case  
16 along. The attorneys sure did it during the voir dire.

17 We hope the rest of the case will move as  
18 swiftly as possible. As I say, the clock permanently goes  
19 on when we get back together.

12:21 20 Due to a longtime scheduling conflict at this  
21 point, we're going to give you the initial instructions,  
22 talk to the attorneys.

23 Instead of having even opening statements  
24 today, we're going to put that off till tomorrow. We'll get  
12:21 25 right into it tomorrow. And the schedule generally -- I'll

*Preliminary Instructions to the Jury*

1 read down the schedule generally.

2 This is the following schedule: We start at  
3 10:00 a.m. in the morning and adjourn at 6:00 p.m. in the  
4 evening. We take a lunch break at about one o'clock --  
12:22 5 1:00 to 2:15 because you're coming in later. Okay?

6 And we take a break every hour and a half as  
7 the time goes along. All of those starting times are  
8 approximate, except we try to get underway right on  
9 schedule. And if we're running late or whatever, we will  
12:22 10 let you know. We're not going to let you stay in there.

11 Also, if I take a break with the attorneys to  
12 discuss some evidence or whatever and we can't do it in a  
13 short conference here, we'll ask you to step into the jury  
14 room, but the clock will keep running. The clock will keep  
12:22 15 running while you're in there.

16 If we do something that's in the middle of  
17 trial and I need to discuss it with the attorneys, there's  
18 no need for you to be sitting around while we just whisper  
19 up here.

12:22 20 I do permit you to take notes, but Bruce  
21 Slavin is our official court reporter. If I need anything  
22 read back, I'm going to ask him and not you for your notes.  
23 So, they're just for your own recollection if you desire.

24 By the way, the profession of court reporting  
12:23 25 has come a long way since a lot of us started practicing

*Preliminary Instructions to the Jury*

1 law.

2 When we started in this, they had -- Actually,  
3 I had someone who was a pen writer. There were a couple of  
4 pen writers in state court. Used to use the Gregg shorthand  
12:23 5 with the -- flipping it with the -- And they all had -- what  
6 is it? -- not even ballpoint pens. They all used fountain  
7 pens, traditionally.

8 In the older stenotype machines, a paper tape  
9 would come up. As the typing went on, a paper tape would  
12:23 10 come up and then flop back into the pile of paper behind the  
11 stenotype machine.

12 Now everything is computerized. After about  
13 five years of being a court reporter, a lot of the court  
14 reporters have their own dictionary, like shorthand within  
12:23 15 shorthand.

16 But the bottom line, if I need anything read  
17 back, it's not going to be from a paper tape. He will look  
18 on his screen.

19 He's got a small screen or he can put it on a  
12:24 20 larger screen, and he can read it in actual letters right  
21 off that. And they also have, if I remember correctly, the  
22 graphics of the paper tape.

23 Is that correct, Bruce?

24 THE COURT REPORTER: Yes, sir.

12:24 25 THE COURT: You still have the graphics coming up,

*Preliminary Instructions to the Jury*

1 if necessary.

2 So, in any event, as you will see, there are  
3 eight persons on the jury. There are no alternates in civil  
4 cases. So, everybody will deliberate.

12:24 5 Just because you're sitting in a certain seat  
6 does not mean you're an alternate. There are no alternates.  
7 All eight of you will deliberate on this case.

8 You've taken an oath, which states you're  
9 going to decide this case based upon the evidence --

12:24 10 Oh. Before I forget, if we're still in trial,  
11 if we are, next Tuesday -- On Tuesdays, we begin at 11:30 in  
12 the morning instead of 10:00. But during deliberations --  
13 jury deliberations, you just keep going. I get in a little  
14 later just on that one morning each week.

12:24 15 You've taken an oath, which states you're  
16 going to decide this case based upon the evidence and the  
17 evidence alone. I want to discuss that with you at this  
18 time.

19 First of all, we don't want you to determine  
12:25 20 who you like and who you dislike and decide the case  
21 accordingly. Therefore, you'll have no contact with anyone  
22 relative to the case.

23 You may, of course, say "good morning" and  
24 "good afternoon" as you pass them in the hall, but you may  
12:25 25 say nothing further. And you may not extend any favors or



*Preliminary Instructions to the Jury*

1 accept any favors, however slight, to or from anyone  
2 involved in this case.

3           When you get home this evening, I'm sure  
4 friends and family will be asking have you been selected to  
12:25 5 serve on a jury. Of course, you may tell them that you  
6 have. And I always mention that you can tell them it's a  
7 civil case, not a criminal case.

8           But aside from that, you're not to discuss  
9 this case with anyone, including each other, until the whole  
12:25 10 case is over, until I read you the instructions, until the  
11 attorneys sum up, and then you go back in and start  
12 deliberating on this case.

13           You're not to make any private investigation  
14 concerning this case. You're not to talk to your own lawyer  
12:26 15 or anyone else you might think would have any kind of expert  
16 knowledge relative to this.

17           So, you'll listen to the testimony as it comes  
18 in and you'll make up your mind based upon the testimony and  
19 any exhibits that are admitted.

12:26 20           About ten years ago they suggested federal  
21 judges in the country mention this to juries and, certainly,  
22 I will: No Google research. Okay? No texting. No  
23 tweeting or whatever the young people do that maybe you're  
24 all tuned into at this time. Okay?

12:26 25           What we're saying is we need you to decide the

*Preliminary Instructions to the Jury*

1 case from what you hear in the courtroom, what's legally  
2 admitted evidence.

3 And, again, it's true what the attorneys say.  
4 In fact, in my final instructions, you'll get this  
12:26 5 admonition, that there are two judges in this case. I'm the  
6 judge of the law, but you're the judges of the facts.

7 We have the jury to decide, listening to a  
8 fact pattern and then, after deliberation, rendering its  
9 verdict based upon that fact pattern.

12:27 10 If you have any problems during the course of  
11 the trial, let a member of the staff know. And should you  
12 be delayed in arriving at the courthouse any day, you need  
13 to let us know.

14 And during that first break you take in a few  
12:27 15 minutes, Ellen will give you all the contact information and  
16 how to call in if there's a medical emergency or a car  
17 breakdown or something like that, because we can't do  
18 anything without all eight of you here.

19 If at any time you have a problem hearing, let  
12:27 20 me know. Raise your hand. We may have a marshal sitting  
21 here from time to time or just get our attention, and we'll  
22 pull the microphone in or I'll ask the witness to speak up.

23 As far as breaks go, we take a break at about  
24 every hour and a half as the testimony goes along.

12:27 25 And this goes for the attorneys, any of the

*Preliminary Instructions to the Jury*

1 parties, any witnesses and the jurors. If anybody needs to  
2 take a break at any time, let me know, and we can always  
3 take ten minutes. No big deal. If anybody needs to take a  
4 break for whatever reason, let me know, we'll take a short  
12:28 5 break, come right back in and keep going.

6 When you return from each break, you'll remain  
7 in the jury room. And when you come back in, you'll be  
8 lined up in the order that you're sitting now. Everybody  
9 remain standing until all the jurors are in place. Then  
12:28 10 we'll all be seated at the same time.

11 Also, as you're aware, the jury room is small  
12 and enclosed. Of course, there's no smoking in there or in  
13 any part of the building. It's a smoke-free facility. But,  
14 certainly, you're free to do so on any of your extended  
12:28 15 breaks outside of the courtroom.

16 Keep in mind both sides have waited for a  
17 while to get to court. And I make a priority, also, of  
18 hearing civil cases because sometimes it's more difficult in  
19 federal court based upon some of the criminal docket.

12:29 20 Now, I don't think I have any criminal stuff  
21 later this week. Do I, Ellen?

22 CASE MANAGER: No, sir.

23 THE COURT: I'll have to check next week. When you  
24 come back -- Yeah. We'll be in trial a little bit next  
12:29 25 week.

*Preliminary Instructions to the Jury*

1           If I have any sentencings or rearraignments  
2   where someone has pled "not guilty" and changes his or her  
3   plea, I read them their rights. And very often they come in  
4   from the lockup and I'll ask the jury, "Do you want to see a  
12:29 5   sentencing? Come on in."

6           In other words, usually, it's done during the  
7   noon hour somewhere. Usually we do it right at the end of  
8   your lunch break.

9           And if anybody wants to come in, I'll give you  
12:29 10   that opportunity, if I'm doing any criminal work, so you can  
11   see what goes on a little on the criminal side of the  
12   docket.

13           I think I've introduced most folks here  
14   because -- what is it? -- I used to get that question all  
12:29 15   the time. "Who are all these people?"

16           Well, we have the official court reporter.  
17   You'll soon meet Ellen Alexander, our case manager. I have  
18   an administrative assistant who works with me in my office.

19           I also have two attorneys with me for two  
12:30 20   years each. One comes on and one comes off each year.  
21   You'll notice there are three here now. This is the  
22   shift-over week.

23           So, Jeremy will be leaving, going to a private  
24   firm. And then, after a year, he's going to go clerk for  
12:30 25   the next step up.

*Preliminary Instructions to the Jury*

1 I guess it was -- you didn't get enough down  
2 here. Right?

3 LAW CLERK: Yes, sir.

4 THE COURT: And then, in a few hours, actually, the  
12:30 5 senior clerk and our newest clerk, Pat, is just off two  
6 years clerking for the chief justice of the Supreme Court of  
7 Idaho.

8 Now, also, during the year I've got law  
9 students who are with me just for the semester just to see  
12:30 10 how courts operate. We help them working with some of the  
11 opinions and so forth.

12 So, from time to time, you'll see some  
13 additional young people on the wall. They're on -- They're  
14 from one of the three local law schools. So, I have four  
12:31 15 all set up for the fall semester. It's already fall.

16 We're going to adjourn today. The first thing  
17 you do when we come back and the clock goes on -- okay? --  
18 is -- what is it? -- opening statements.

19 Opening statements is nothing more than what  
12:31 20 the attorneys feel the evidence will show, and it's going to  
21 be couched as, 'We assume the evidence will be.....,' 'We  
22 assume the evidence will be....' or 'We anticipate the  
23 evidence is going to be this.' That's it.

24 Then, once they're done doing that, we call  
12:31 25 the first witness and we get rolling. So, that's what we

*Preliminary Instructions to the Jury*

1 have. We certainly thank you for being here.

2 When we adjourn in just a moment, you'll step  
3 into the jury room.

4 Ellen will visit with you for what? About  
12:31 5 five minutes?

6 CASE MANAGER: Yes, sir.

7 THE COURT: And then you'll be free for the day.

8 I want the attorneys to remain here for about  
9 two or three minutes. I've got one other thing I need to  
12:32 10 visit with you about.

11 Ladies and gentlemen, if you would, please  
12 stand. Thank you. We'll see you tomorrow. Enter the jury  
13 room right there.

14 And I want to talk to the lawyers for just a  
12:32 15 minute.

16 (Jury not present)

17 THE COURT: What's the status of the time? Have  
18 you got time ready for me?

19 MR. ZUMMO: Plaintiff would request eight total  
12:32 20 hours, Your Honor.

21 THE COURT: Okay. Plaintiff wants eight hours  
22 total.

23 And how about the defense?

24 MR. STROTHER: Your Honor, I'd like eight hours as  
12:33 25 well.

1 THE COURT: Keeping in mind a lot that will be  
2 going on you may put on.

3 But, in any event -- All right. What I will  
4 do, later today you will get the timing order. Okay? You  
12:33 5 will get the timing order as to how much time you have. And  
6 then I can draw up that sheet. But that's what I needed.

7 You will see, in all of my years, we can  
8 assume about five and a half hours a day -- five to five and  
9 a half hours per day max or, beyond that, it wears you out.  
12:33 10 I know the late -- what is it? -- Lucius Bunton out in -- He  
11 was out in --

12 MR. ZUMMO: Pecos.

13 THE COURT: -- Pecos, yeah. He would go all out.  
14 I don't do that. But I think that, in all of my years,  
12:33 15 between five and five and a half hours a day is about it.

16 But we'll get this to you today. So, check  
17 your -- what is it? -- check the court docket. It'll be  
18 electronically filed. I'll get that done today.

19 All right. What else do you want to talk  
12:34 20 about?

21 MR. ZUMMO: One thing came to me when Ms. Alexander  
22 read the name of the case. Originally, the first Defendant  
23 was RZ Enterprises. We settled with them. And I'm a little  
24 concerned that, if the jury hears that, they're going to  
12:34 25 start wondering who is that.

1 THE COURT: So, what's your suggestion?

2 MR. ZUMMO: Maybe go to the next defendant.

3 THE COURT: You want to realign --

4 MR. ZUMMO: Just to say Preston Wood v. Urban

12:34 5 Living.

6 THE COURT: Okay. In other words, omit who?

7 Omit --

8 MR. ZUMMO: -- RZ Enterprises.

9 THE COURT: Again.

12:34 10 MR. ZUMMO: RZ --

11 THE COURT: -- Enterprises?

12 MR. ZUMMO: Yes, Your Honor.

13 And there is an entity Oppidan.

14 THE COURT: What?

12:34 15 MR. ZUMMO: Oppidan.

16 THE COURT: How do you spell it?

17 MR. ZUMMO: O-p-p-i-d-a-n.

18 THE COURT: -d-a-m?

19 MR. ZUMMO: -n, as in "nanny".

12:35 20 THE COURT: Omit all reference, right --

21 MR. ZUMMO: Yes, Your Honor.

22 THE COURT: -- as to these two. That's a good

23 point.

24 What else?

12:35 25 MR. ZUMMO: That's all I have on that.



1                   We have -- Between ourselves, Your Honor, we  
2                   don't want to invoke the rule as to my husband and wife  
3                   clients and the Camerons, if that's okay with the Court.

4                   THE COURT: Okay. That's by agreement. You want  
12:35 5                   it invoked as to everyone else?

6                   MR. ZUMMO: I guess so. But I don't think we have  
7                   any other witnesses except experts.

8                   THE COURT: I always exempt the experts.

9                   MR. ZUMMO: Thank you, Your Honor.

12:35 10                  THE COURT: They can stay in.

11                  MR. ZUMMO: Yes, sir.

12                  THE COURT: Ellen, a couple of things.

13                         Oh. Yes. What else?

14                  MR. STROTHER: We do have a witness I subpoenaed.  
12:35 15                  I subpoenaed Mr. Wooten. And, of course -- Two other.  
16                  RZ Enterprises.

17                  MR. ZUMMO: Okay.

18                  MR. STROTHER: So, there are two other witnesses.  
19                  And, of course, the rule should be invoked with regard to  
12:36 20                  them.

21                  THE COURT: All right. Then, when they come in,  
22                  let me know.

23                         The rule has been invoked. Therefore, when  
24                  you see someone come in who's under the rule, you explain to  
12:36 25                  them that they're to remain out of the courtroom, not to

1 discuss it with anyone, they may discuss it with the  
2 attorneys, and then, when they take the stand, they'll be  
3 free of the rule at that time.

4 Ellen.

12:36 5 CASE MANAGER: Yes, sir.

6 THE COURT: Off the record.

7 (Off-the-record discussion)

8 THE COURT: Anything further from the Plaintiff?

9 MR. ZUMMO: One last question.

12:37 10 THE COURT: Yes, sir.

11 MR. ZUMMO: What is the Court's practice on when  
12 the admitted -- or agreed facts are read to the jury?

13 THE COURT: Say again.

14 MR. ZUMMO: When will the Court read the agreed  
12:37 15 facts?

16 THE COURT: Whenever you want.

17 MR. ZUMMO: I guess we would like the Court to  
18 start the trial with those, please.

19 THE COURT: When we start the trial?

12:37 20 MR. ZUMMO: Yes, Your Honor.

21 THE COURT: Just make sure I have what you want me  
22 to read.

23 MR. ZUMMO: Yes, sir.

24 THE COURT: And I'll explain to them that this is  
12:37 25 agreed between the parties, no additional proof is

1 necessary.

2 MR. ZUMMO: Thank you.

3 THE COURT: Yes, sir.

4 MR. STROTHER: Nothing, Your Honor.

12:37 5 THE COURT: Okay. Thanks.

6 We'll see everybody tomorrow. Off the record.

7

8 COURT REPORTER'S CERTIFICATE

9 I, BRUCE SLAVIN, certify that the foregoing is a  
10 correct transcript from the record of proceedings in the  
11 above-entitled matter, to the best of my ability.

12

13 s/Bruce Slavin  
14 BRUCE SLAVIN, RPR, CM

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<p>             1. <b>Introduction</b>              This report provides a comprehensive overview of the project's progress, objectives, and findings. It is structured as follows:              - <b>Section 1:</b> Introduction and Background              - <b>Section 2:</b> Methodology and Data Collection              - <b>Section 3:</b> Results and Analysis              - <b>Section 4:</b> Discussion and Conclusions              - <b>Section 5:</b> Recommendations and Future Work           </p>	<p>             2. <b>Methodology</b>              The methodology employed in this study is a combination of qualitative and quantitative research methods. Data was collected through interviews, surveys, and archival research. The analysis was conducted using thematic analysis and statistical software.           </p>	<p>             3. <b>Results</b>              The results of the study indicate that there is a significant correlation between the variables studied. The data shows that the majority of participants reported a positive impact on their well-being.           </p>	<p>             4. <b>Discussion</b>              The findings of this study have important implications for the field of research. They suggest that the intervention studied is effective in achieving its goals.           </p>	<p>             5. <b>Conclusions</b>              In conclusion, the study has provided valuable insights into the research topic. The results support the hypothesis and provide a basis for further research.           </p>
<p>             6. <b>Recommendations</b>              Based on the findings, the following recommendations are made:              - Implement the intervention in a wider range of settings.              - Conduct further research to explore the long-term effects of the intervention.           </p>	<p>             7. <b>Future Work</b>              Future research should focus on understanding the underlying mechanisms of the intervention's effectiveness and exploring its application in different populations.           </p>	<p>             8. <b>References</b>              The following references are cited in this report:              - Smith, J. (2018). The impact of the intervention on well-being. <i>Journal of Research</i>, 15(2), 123-135.              - Doe, A. (2019). A review of the literature on the topic. <i>Review of Research</i>, 22(1), 45-60.           </p>	<p>             9. <b>Appendix A</b>              This appendix contains the raw data collected during the study. It includes a list of participants and their responses to the survey questions.           </p>	<p>             10. <b>Appendix B</b>              This appendix contains the interview transcripts and the coding scheme used for the thematic analysis.           </p>

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<p>                 1. <b>Identify the problem.</b> The problem is that the company is not meeting its sales targets.             </p> <p>                 2. <b>Analyze the problem.</b> The problem is caused by a combination of factors, including a weak marketing strategy, poor product quality, and inefficient sales processes.             </p> <p>                 3. <b>Develop a solution.</b> The solution is to implement a new marketing strategy, improve product quality, and streamline sales processes.             </p> <p>                 4. <b>Implement the solution.</b> The solution is being implemented in a phased manner, with the new marketing strategy being rolled out first, followed by product quality improvements, and finally, sales process streamlining.             </p> <p>                 5. <b>Evaluate the results.</b> The results of the implementation are being monitored closely, and it is expected that the company will meet its sales targets by the end of the year.          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[illegible]

[illegible]

<p>[REDACTED]</p>	<p>[REDACTED]</p>
<p>[REDACTED]</p>	<p>[REDACTED]</p>
<p>[REDACTED]</p>	<p>[REDACTED]</p>